

RAILROAD COMMISSION OF TEXAS

APPLICATION OF WEST TEXAS GAS, §
INC. FOR APPROVAL OF §
ABANDONMENT OF SERVICE TO § GAS UTILITIES DOCKET NO. 8900
RURAL CUSTOMERS IN BROWN AND §
COLEMAN COUNTIES, TEXAS §

ORDER

Notice of Open Meeting to consider this order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN., Chapter 551 (Vernon 1994 and Vernon Supp. 1999).

FINDINGS OF FACT

1. In June, 1998, West Texas Gas (WTG) acquired the Brady North transmission system, which includes the Whon, Winchell, and Bangs systems, from the City of Brady.
2. On August 12, 1998, WTG filed an application to abandon utility service to ten residential and commercial customers in Brown and Coleman Counties, Texas, who are served by the Whon, Winchell, and Bangs systems.
3. On August 12, 1998, August 13, 1998, and October 15, 1998, WTG notified, by certified mail, all residents receiving gas service along the Whon, Winchell, and Bangs transmission system of WTG's intent to abandon service.
4. On August 21, 1998, Douglas and Carolyn Hampton filed a protest to the application.
5. On September 4, 1998, Burgess Stewardson filed a protest to the application.
6. On September 8, 1998, John Vance filed a protest to the application.
7. On February 22, 1999, notice of hearing was issued in the case.
8. A hearing was conducted in the case on March 19, 1999, and the record remained open for the submission of late-filed exhibits until June 1, 1999.
9. The Commission adopted a new rule, found at 24 Tex. Reg. 134 (1999) (to be codified at Title 16 TEX. ADMIN. CODE § 7.4(b)), after the application in this case was filed but before the hearing. This new rule specifies what must be included in an application to abandon residential and commercial customers, defines what is a "qualifying offer" to convert customers to another fuel, and sets deadlines for processing the applications.

10. By the time the new abandonment rule was adopted by the Commission, WTG had already filed its application and extended conversion offers to the customers served by the system. The protestants had already filed protests and been admitted as parties in the case. At the time each of these actions occurred, WTG and the protestants reasonably expected that the case would be governed by 16 TEX. ADMIN. CODE § 7.45(4)(G), which does not contain specific requirements for applications or offers to customers.
11. Subsequent to the filing of the application, Mr. Vance and Mr. Stewardson rejected the offer made by WTG, disconnected from the system and converted to propane fuel for their homes.
12. Mr. Vance and Mr. Stewardson converted to propane fuel in response to interruptions of gas service. The service interruptions which induced Mr. Vance and Mr. Stewardson to disconnect began before WTG filed its application to abandon.
13. Mr. Terry Bennie, who was a customer on Winchell system at the time the application was filed, accepted WTG's offer for conversion to propane fuel and disconnected voluntarily from WTG's system.
14. Mr. Vance, Mr. Stewardson, and Mr. Bennie no longer receive any service from WTG.
15. The Whon Lateral is a low-pressure gathering system, consisting of 17.2 miles of eight-inch steel pipe and four miles of polyethylene pipe. The line operates a 12 pounds per square inch (p.s.i.) normally, with a maximum operating pressure of 25 pounds p.s.i.
 - a. Production transported by the Whon system has been steadily declining, from 1,222 Mcf transported by the line in June, 1998, to zero transported in February, 1999.
 - b. The system lost 100 % of the gas fed into it from June, 1998 through February, 1999.
 - c. The quality of the gas itself has been declining in quality. The gas has a nitrogen content of approximately 13 percent.
 - d. To repair the line and install needed cathodic protection would cost approximately \$9,800 per mile. Total costs to repair the system adequately would be \$168,000.
 - e. West Texas Gas would have to operate the system for 100 years at current levels of revenue to recoup this investment. Since the volume of gas transported on the line has been declining, the pipeline's revenue is expected to fall below current levels.

- f. The repairs themselves have a life expectancy of 20 to 40 years.
 - g. Two of the protestants, Mr. John Vance, Route 1, Box 18, Coleman, Texas 76834 and Mr. Burgess Stewardson, Route 1, Box 414, Santa Anna, Texas 76878, were attached to the Whon Lateral.
16. The Bangs Lateral is low-pressure gathering system consisting of 5.5 miles of 5.5-inch steel pipe, 8.7 miles of 2 7/8-inch pipe and 5.2 miles of polyethylene pipe. The system operates at a normal pressure of 12 p.s.i. and at a maximum pressure of 25 p.s.i.
- a. Two residential customers receive gas through the Bangs system: David Early, Route 1, Box 62, Bangs, Texas 76801 and protestants Douglas and Carolyn Hampton, Route 1, Box 41, Bangs, Texas 76801.
 - b. Production transported through the system has also been declining, from 15,060 Mcf in June, 1998, to 3,270 Mcf in February, 1999. Producers have either shifted to using another gathering system in the area or have shut in their wells because of low prices.
 - c. The Bangs System has an average lost and unaccounted-for percentage of 7.3 since WTG acquired it in June, 1998.
 - d. The cost to repair the line to meet current standards and install needed cathodic protection for the steel pipe is \$9,800 per mile. Total cost to repair the system is \$139,000.
 - e. The estimated life span of the repairs is 20 to 40 years. Based on current revenue, WTG would not recoup its investment during the lifetime of the repairs.
17. The Winchell system is a low-pressure gathering system consisting of at least 7.8 miles of steel and polyethylene pipe. The Winchell system operates at a normal pressure of 12 p.s.i. and at a maximum operating pressure of 25 p.s.i.
- a. Five residential customers receive gas through the Winchell system: Kenneth Gilbreath, Route 1, Box 68, Brookesmith, Texas 76827; Mike Stegemoller, Route 1, Box 68C, Brookesmith, Texas 76827; Glenn Williamson, Route 1, Box 68A, Brookesmith, Texas 76827; Mildred Herman, Route 1, Bangs, Texas 76823; and Charles Miller, General Delivery, Santa Anna, Texas 76878. None of these customers protested the application.
 - b. The Winchell system has an average lost and unaccounted-for gas level of 6.794 percent since WTG acquired it in June, 1998.
 - c. The cost to repair the line and install needed cathodic protection is \$9,800 per mile, for a total cost to repair of \$174,440. The estimated life span of the repairs

is 20 to 40 years.

- d. Based on current revenue received through the line, it would take 100 years for WTG to recoup the investment needed to make needed repairs.
18. WTG bought the three systems after much of the deterioration to the pipelines had already occurred.
 19. WTG offered to provide each customer on the system the following items in exchange for the customer's agreement to the abandonment:
 - a. A 250-gallon propane tank rent-free for so long as the customers purchased propane from WTG. WTG retains ownership of the tank. If the customer changes propane suppliers, WTG will remove the tank.
 - b. One tank fill of propane free of charge.
 - c. The customers themselves would be responsible for arranging for a licensed plumber to convert existing appliances from natural gas to propane, at the customer's own expense.
 20. WTG's offer of conversion does not completely separate the customers from WTG. The existing offer only transfers customers from regulated utility service to unregulated propane service.
 21. Customers who accepted WTG's offer and subsequently changed propane suppliers would have to replace their fuel systems.
 22. The approximate cost of conversion of a water heater, cookstove, and heater in the area to be abandoned is \$150.
 23. Three of the protestants, Mr. and Mrs. Hampton and Mr. Vance, receive gas from WTG free of charge in exchange for allowing pipeline easements through their property.
 24. WTG has agreed to honor the easement contracts for as long as the company uses the pipelines.

CONCLUSIONS OF LAW

1. West Texas Gas (WTG) is a gas utility as defined in TEX. UTIL. CODE ANN. § 101.003(7) (Vernon 1998).
2. The Railroad Commission of Texas (Commission) has jurisdiction over this application pursuant to TEX. UTIL. CODE ANN. §§ 102.001 & 121.051 (Vernon 1998) and 16 TEX. ADMIN. CODE § 7.45(4)(G) (1999).
3. WTG's public notice of this application is sufficient and appropriate, pursuant to TEX. GOV'T CODE §§ 2001.051 and 2001.052 and 16 TEX. ADMIN. CODE § 7.10(c).
4. A gas utility is obligated to furnish service that is efficient and reasonable under TEX. UTIL. CODE ANN. § 104.251 (Vernon 1998).
5. No gas utility may abandon service to a customer without written approval from the Commission or regulatory authority under 16 TEX. ADMIN. CODE § 7.45(4)(G) (1999).
6. The costs of repairs necessary to continue natural gas service, relative to the anticipated revenue, makes continued service to the customers served by the systems which WTG has applied to abandon neither efficient nor reasonable within the meaning of TEX. UTIL. CODE ANN. § 104.251 (Vernon 1998).
7. The offer WTG made to its customers is not reasonable, and will not support written approval by the Commission under 16 TEX. ADMIN. CODE § 7.45(4)(G) (1999).
8. It was reasonable for WTG to expect that the rules in effect when its application was filed and conversion offers were extended would apply to its actions; therefore, the amendments to 16 TEX. ADMIN. CODE § 7.4, adopted after WTG took those actions, do not apply to this case. *Landgraf v. USI Film Products*, 511 U.S. 244 (1994); *Grigsby v. Peak*, 57 Tex. 142 (1882).
9. It is reasonable under 16 TEX. ADMIN. CODE § 7.45(4)(G) (1999) for the Commission to require the following actions by WTG with respect to each customer without alternative service before issuing written approval of the application to abandon service through this system:
 - a. WTG must provide one propane free of charge tank for each such customer;
 - b. WTG must fill the tank one time with liquid fuel; and
 - c. WTG must give \$150.00 to each such customer to be abandoned to compensate them for converting their appliances to propane.

10. None of the Railroad Commission's organic laws give the Commission jurisdiction to determine rights or duties under the easement contracts, which are contract for an interest in land. Therefore, any rulings regarding the parties' rights under the easement contracts described in Finding of Fact No. 23 are outside the scope of this Commission's jurisdiction in this case.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS that WTG, at its own cost, **SHALL** give the following customers a 250-gallon propane tank and 250 gallons of propane fuel, and pay \$150 to each of these customers for the conversion of their appliances to propane fuel:

Kenneth Gilbreath, Route 1, Box 68, Brookesmith, Texas 76827
Mike Stegemoller, Route 1, Box 68C, Brookesmith, Texas 76827
Glenn Williamson, Route 1, Box 68A, Brookesmith, Texas 76827
Mildred Herman, Route 1, Bangs, Texas 76823
Charles Miller, General Delivery, Santa Anna, Texas 76878
Douglas Hampton, Route 7, Box 41, Brownwood, Texas 76801
David Early, Route 1, Box 62, Bangs, Texas 76823.

IT IS FURTHER ORDERED that WTG's application to abandon utility service to ten residential and commercial customers in Brown and Coleman Counties, Texas is hereby **APPROVED**.

IT IS FURTHER ORDERED that all proposed Findings of Fact and Conclusions of Law, not specifically adopted herein, are **DENIED**.

Signed this 16th day of November, 1999.

RAILROAD COMMISSION OF TEXAS


Michael L. Williams, Chairman


Tony Garza, Commissioner


Charles R. Matthews, Commissioner

ATTEST:


Secretary